



POLICE DEPARTMENT

September 23, 2014

MEMORANDUM FOR: Police Commissioner

Re: Detective Ivan Rosado
Tax Registry No. 923071
28 Precinct Detective Squad
Disciplinary Case No. 2013-10316

The above-named member of the Department appeared before the Court on June 3, 2014, charged with the following:

1. Said Detective Ivan Rosado, on or about February 11, 2013, at approximately 1301 hours, while assigned to the 28th Detective Squad and on duty, inside of the 28th Precinct Stationhouse, New York County, was discourteous to Person A in that he said in sum and substance to her, THIS IS BULLSHIT TO ME. I DON'T GIVE A FUCK ABOUT HIM. I DON'T GIVE A FUCK ABOUT YOU. YOU'RE WASTING MY TIME. *(As amended)*

P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT GENERAL

The Civilian Complaint Review Board (CCRB) was represented by Gretchen Robinson, Esq. Respondent was represented by James Moschella, Esq., Karasyk & Moschella LLP.

Respondent pleaded Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

RECOMMENDATION

Respondent is found Guilty in Part.

FINDINGS AND ANALYSIS

Petson A had been married to Petson B for two years before they separated in 2012. At the time of Respondent's trial, Person A lived within the confines of the 30 Precinct and Person B within the confines of the [REDACTED] Precinct. [REDACTED]

[REDACTED]

On January 28, 2013, Person B made an allegation [REDACTED] against Person A [REDACTED]. Officers from the 30 Precinct responded as well and saw nothing amiss. They had in fact responded to Person B's arrest and remembered the incident. Person A testified the officers told her that if her husband tried to use the police against her again, she should tell Family Court about his harassment. [REDACTED]

[REDACTED]

[REDACTED]

But also on January 28, 2013, Person A telephoned Person B about an outstanding car loan. Person B had not paid for the note but apparently Person A needed the car. She testified that she told him if he did not pay the note, she would sue him.

Person B filed a complaint report with the 28 Precinct. He alleged that Person A called him constantly and most recently told him if "he does not pay her bills she will make his life hell." A '61' was drafted charging Person A with Aggravated Harassment in the Second Degree (Penal Law § 240.30)¹ (see CCRBX 2, complaint report). Person A noted that Person B initiated divorce proceedings in February 2013.

¹ Recently, in People v. Raphael Golb, 23 N.Y.3d 455 (May 13, 2014), the Court of Appeals held Penal Law § 240.30 (1)(a), communicating in a manner likely to cause annoyance or alarm with intent to do so, to be unconstitutional. Although this statute likely was the statute under which Person A was charged, the constitutional issue has no direct bearing under these facts on whether Respondent possessed probable cause to arrest her.

The case was assigned to Respondent, a detective from the 28 Precinct Detective Squad. A few weeks after Person A's phone call, on February 11, 2013, Person A was with her daughter when she received a call from Respondent. He stated that he needed her to come into the precinct. Person A testified that she told him she did not know why he was calling, but also told him that she had not done anything wrong. According to Person A, she thought she was just going to the precinct for an "interview." She nevertheless testified that Respondent said he would come to her home and arrest her if she did not come in.

Person A went with her daughter to the precinct. She also gathered various documents to show Respondent, [REDACTED], and information on the officers who responded to the ACS complaint. When Person A arrived at the 28 Precinct around the time that she and Respondent had agreed on, he was not there. She saw him walking in with his meal and they went upstairs to the squad room.

Respondent and Person A entered an interview room and Respondent showed her the complaint. Person A told Respondent that Person B was abusing the system and that she was the true victim in all this. She tried to show him her documentation and asked him to make some phone calls to find out the truth. Respondent answered, in sum and substance, that he understood but at that time he only was dealing with the complaint against her. Because it was a family offense, his discretion was limited or nonexistent and he had to arrest her. See Criminal Procedure Law § 140.10 (4)(c); Patrol Guide § 208-36 (8). Person A denied at trial that she "harassed" Person B or told him she would make his life hell if he did not pay.

Person A was very upset. She had not yet found childcare for her daughter and was upset that they were going to be separated, [REDACTED]

[REDACTED]. According to Person A, Respondent

cared only about closing out the case. To her complaints, she alleged, Respondent responded in sum and substance with the language charged in the specification: "This is bullshit to me. I don't give a fuck about him. I don't give a fuck about you. You're wasting my time." The specification charges Respondent with discourtesy to Person A for these alleged remarks.

Respondent testified that upon being assigned the case, he interviewed Person B. He had to make the arrest and did so. He agreed that he did not engage Person A in her discussion of what led up to her presence in the 28 Precinct that day. He denied making the charged remarks, but admitted telling her the case was "bullshit." According to Respondent, however, he did not say it discourteously. Rather, he was trying to calm her down. He thought that she was concerned the arrest would have serious repercussions for her personal or professional life. He meant to assure her that the case was "bullshit" and would not go anywhere.

The Court finds Respondent's testimony about the "bullshit" comment credible. He could have denied using any profanity toward Person A. Instead, he forthrightly admitted that he had used profanity but offered a reasonable explanation.

Members of the service always must be careful to ensure that their interactions with the public are courteous and respectful. Cf. *Case Nos. 2012-6660 & -7865*, p. 27 (Mar. 26, 2014). What a police officer thinks is an offhand remark may seem insensitive to a citizen. Cf. *Case No. 86030/10* (Nov. 15, 2011) (though it would have been misconduct to tell sex-crimes complainant's mother, as charged, "Just a little fellatio, it's no big deal," it was not misconduct to explain that Penal Law defined nonconsensual oral sex as "criminal sexual act," not rape).

That is what occurred here with Respondent's "bullshit" remark. Respondent was dealing with an arrestee who was in the midst of an acrimonious divorce. As noted, the Court credits his explanation that he was trying to defuse the situation. Person A was very upset and was

trying to explain the situation to him, to no avail. Not that there was any avail: Respondent had probable cause to arrest Person A and he was obligated by law and the Patrol Guide to make the arrest. He nonetheless should have realized, as a member with 15 years of service to the Department and a participant in numerous domestic violence arrests, that an arrestee in a back-and-forth marital war would not see her concerns as “bullshit.” Person A was not concerned about long-term imprisonment; she was upset with the situation as a whole. Respondent, therefore, was discourteous to Person A in this regard. The general quality of Respondent’s investigation as a whole is not a matter for this tribunal, in this case, to discuss, because it is not charged in the specification.

The remainder of the specification alleges that Respondent told Person A, “I don’t give a fuck about him” and “I don’t give a fuck about you,” as well as, “You’re wasting my time.” Self’s testimony in this regard ultimately was not credible. Person A admitted that in her initial online CCRB complaint (RX A), she mentioned only that Respondent cursed at her. She posited that the space allotted for the narrative was limited. As RX A showed, however, while Person A understandably had a lot to say, there was room for several paragraphs. Person A also admitted that during a follow-up phone interview with CCRB, she said Respondent told her he did not care about her complaints, but she did not mention him “not giving a fuck.” Only in her in-person CCRB interview, which came after the online complaint and phone interview, did Person A mention the statements with the profanity, it would appear. This suggests that the account was embellished as time went on, perhaps even unintentionally. Therefore the Court cannot credit the complainant’s version of this part of Respondent’s statement.

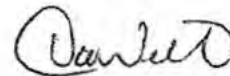
In sum, because Respondent was discourteous to Person A for telling her that the case was “bullshit,” he is found Guilty in Part of the specification.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on August 31, 1998. Information from his personnel folder that was considered in making the penalty recommendation is contained in an attached confidential memorandum.

The Court has considered that Respondent ultimately was acting in good faith in telling Person A that her case was "bullshit." Nevertheless, he should have realized that in context this was discourteous to an arrestee who already was upset, not simply about being arrested but the entirety of her marital situation. The manner in which Respondent attempted to mollify the situation was misguided. In light of that fact, as well Respondent's longtime dedicated service to the Department, the Court recommends that he be reprimanded, i.e., warned and admonished. See, e.g., Case No. 79834/04, Police Comm'r's Mem. (Jan. 7, 2005) ("With consideration of the totality of circumstances during the evolving situation in this matter, in addition to acknowledging Respondent []'s good faith efforts and actions, there will be *no forfeiture* of accrued time/leave; however, Respondent [] is to receive re-instruction.").

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

OCT 10 2014

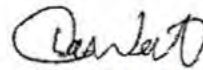
WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE IVAN ROSADO
TAX REGISTRY NO. 923071
DISCIPLINARY CASE NO. 2013 10316

Respondent received an overall rating of 4.5 "Highly/Extremely Competent" in his last three annual evaluations. [REDACTED] He has no prior formal disciplinary record.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner – Trials